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# Pretrial ruling favors plaintiffs in asbestos cases

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A recent pretrial decision in a federal case against W.R. Grace Co. and Sealed Air Corp. could make it easier for plaintiffs with asbestos-related lawsuits to prove the companies were involved in fraudulent business transactions prior to the chemical company's bankruptcy filing in 2001.

U.S. District Judge Alfred M. Wolin ruled on July 29 that W.R. Grace should have anticipated potential future asbestos lawsuits against the chemical company prior to the sale of its food packaging business to Sealed Air in 1998.

His decision means asbestos cases filed after 1998 will be considered to determine whether W.R. Grace would have been able to meet its full financial responsibility at the time of the transfer.

Attorneys for the plaintiffs argue

that W.R. Grace sold the food packaging division, called Cryovac, for less than its actual value. They allege the divestiture of Cryovac was an attempt by W.R. Grace to hide its assets to escape asbestos liabilities that could top \$1 billion.

Lawyers representing W.R. Grace claim the transaction was a fair and legal agreement between two independent companies. They hope to prove W.R. Grace genuinely believed in 1998 that it could meet all its financial obligations in spite of the transfer, and that a drastic increase in asbestos claims in 2000 came as a surprise.

The average number of asbestos claims filed annually against W.R. Grace from 1985-1998 was 31,500, according to plaintiffs' figures. In 2000, that number was up to 48,700. Wolin said that increase was not "of exponential proportions."

Upon hearing Wolin's decision, Sealed Air announced it will file an

appeal before the fraudulent transfers case goes to full trial on Sept. 30.

Sealed Air, the maker of Bubble Wrap, issued the following statement:

"The 1998 transaction by which the Cryovac business of Grace was combined with Sealed Air was an arm's-length transaction negotiated in good faith between two independent companies after considering all relevant issues, including Grace's solvency under applicable law. We are disappointed with the interim pretrial ruling on the legal standards to be applied at the September 30th hearing, and we will seek a prompt appeal of this decision."

The U.S. Justice Department, at the request of the Environmental Protection Agency, joined the fraudulent transfers case against W.R. Grace on May 22. Plaintiffs hope to recover as much as \$4 billion in assets, which then could be turned over to bankruptcy court for distribution to W.R. Grace creditors and to cover

asbestos liabilities.

Liabilities include personal-injury and property-damage claims involving asbestos exposure stemming from the W.R. Grace vermiculite mine 6 miles northeast of Libby.

Tremolite asbestos contaminated the Libby vermiculite and has been blamed for the deaths of more than 200 miners and their family members.

W.R. Grace is still in operation today, despite the bankruptcy filing. Its shares are traded on the New York Stock Exchange.

Other corporate scandals recently uncovered by the media could be a boon to the plaintiffs in the case against W.R. Grace, said Kalispell attorney John Heberling.

"In the wake of Enron and World-Com and the climate that created, Grace may not get away with what it tried to do with these assets," Heberling said.

Although the full ramifications of

the July 29 decision have yet to unfold, Heberling said it should work in the plaintiffs' favor.

"We look at it as a good thing," he said.

Many law firms for the plaintiffs contend that other illegal transactions transpired in the decade leading up to W.R. Grace's bankruptcy. However, Wolin's ruling also included a stipulation that only the Cryovac transfer would be an issue at the upcoming trial.

Wolin also decided that W.R. Grace's intention as it initiated the transfer is irrelevant, nullifying any potential argument that Grace enacted business transactions in order to shield its assets from asbestos claims. Only the company's solvency status on the date of transfer will be considered.

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